

The argument was confined to a consideration of the acts of Assembly, the contract of the 10th of February, 1794, and the city ordinances; but the case involves interests of a much wider range; it is one which requires to be investigated not only in relation to the immediate rights of these parties; but as to the manner in which it affects the course of commerce in a great public seaport; and as it regards the uses which those who resort to that port have a right to make of those wharves. The public as well as these parties, therefore, have a deep concern in the questions now to be determined. (b)

A wharf, like a road, may certainly be made on private property; and the one or the other may be as exclusively the property of an individual as his house, or any other portion of his separate estate. A wharf is a building which is always an encroachment on navigable water; because, unless its boundary wall were to extend beyond high water mark, vessels could not approach and lay at it. (c) But these are open wharves in a great public seaport; they are parcel of a public place dedicated to commerce; a place to which all have a right to resort, subject to certain legal regulations. A wharf of this description must always be viewed as a part of the port in which it is situated; it cannot be considered as a thing unconnected with the port itself; because it is subject to the law of the port; and, as is admitted in this instance, the claim of wharfage, who ever may be allowed to profit by it, must be controlled by that law. (d)

A port, in common sea phrase, may be said to be any safe station for ships; but, in law, it is described to be a place for arriving and lading and unlading of ships in a manner prescribed by law; and near to which is a city or town for the accommodation of mariners and the securing and vending of merchandise. So that in this sense a public port is a complex subject, consisting of somewhat that is natural, as a convenient access from the sea, a safe situation against winds, and a shore upon which vessels may well unlade; something that is artificial, as keys, wharves and warehouses; and something that is civil, as privileges and regulations given to it by the government. A public port often includes more than the bare place where ships lade or unlade; it is some-

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(b) *Attorney-General v. Burrigge*, 6 Exch. Rep. 356; 1 Fowl. Exch. Pra. 257.—

(c) *Buszard v. Capel*, 13 Com. Law Rep. 379.—(d) *Attorney-General v. Parmeter*, 6 Exch. Rep. 373.